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ALAMEDA COUNTY

July 28, 2021

CLERK OF
THE SUPERIOR COURT
By Nicole Hall, Deputy

CASE NUMBER:

RG21100764

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8 *Attorneys for Plaintiff, on behalf of the State*
9 *of California and Aggrieved Employees*

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

13 KHAYO SISHI, on behalf of the State of
14 California;

15 *Plaintiff,*

16 v.

17 ESKATON PROPERTIES INCORPORATED,
CALIFORNIA HEALTHCARE
18 CONSULTANTS, INC., and DOES 1-100,
inclusive;

19 *Defendants.*

Case No.: RG21100764

**FIRST AMENDED COMPLAINT FOR
PENALTIES PURSUANT TO SECTIONS
2699(a) and (f) OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Khayo Sishi (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendants Eskaton Properties
5 Incorporated and California Healthcare Consultants, Inc. (“Defendants”), on behalf of the State of
6 California to collect statutory penalties as a result of Defendants’ systematic violations of California
7 labor law with respect to Defendants’ non-exempt, hourly workers employed in California
8 (“Aggrieved Employees”).

9 2. Defendants maintain a longstanding policy and/or practice of failing to properly
10 compensate Plaintiff and Aggrieved Employees for work related tasks performed while “off-the-
11 clock,” including, but not limited to, attending a mandatory monthly training lasting several hours.

12 3. Defendants also regularly fail to provide Plaintiff and Aggrieved Employees with
13 timely, legally compliant meal and rest breaks, yet Defendants do not provide Plaintiff and Aggrieved
14 Employees with premium pay for missed, late and/or interrupted meal and rest breaks.

15 4. As a result, Plaintiff and Aggrieved Employees bring this action to challenge
16 Defendants’ policies and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees
17 for all hours worked; (2) failing to compensate Plaintiff and Aggrieved Employees for all overtime
18 wages; (3) failing to compensate Plaintiff and Aggrieved Employees for all minimum wages; (4)
19 failing to make available, authorize and/or permit Plaintiff and Aggrieved Employees to take timely
20 and compliant meal periods to which they are entitled by law and failing to make premium payments
21 for those non-compliant meal periods; (5) failing to make available, authorize and/or permit Plaintiff
22 and Aggrieved Employees to take timely and compliant rest periods and failing to make premium
23 payments for those non-compliant rest periods; (6) failing to provide Plaintiff and Aggrieved
24 Employees accurate, itemized wage statements; and (7) failing to timely pay Plaintiff and Aggrieved
25 Employees full wages following separation from employment.

26 5. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
27 attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
28 Private Attorneys General Act (“PAGA”).

PARTIES

6. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers employed by Defendants as residential care associates & assistants, residential medication associates & assistants, home health aides, housekeepers, any other workers involved with patient care, and other non-managerial positions throughout California.

7. Plaintiff is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California.

8. Plaintiff has been employed as a non-exempt residential care assistant by Defendants since approximately March 2019. Plaintiff works at Defendants' location in Burlingame, California.

9. Defendant Eskaton Properties Incorporated is a domestic corporation with its principal place of business located in Carmichael, California. Eskaton does business in the State of California and employs workers, including Plaintiff and Aggrieved Employees, in California. Eskaton may be served with process by serving its registered agent, Todd Stanley Murch, 5105 Manzanita Avenue, Carmichael, California 95608.

10. Defendant California Healthcare Consultants, Inc. is a California corporation with its principal place of business located in Carmichael, California. California Healthcare Consultants, Inc. does business in the State of California and employs workers, including Plaintiff and Aggrieved Employees, in California. California Healthcare Consultants, Inc may be served with process by serving its registered agent, Todd Stanley Murch, 5105 Manzanita Avenue, Carmichael, California 95608.

11. Upon information and belief, Defendants jointly own, operate, and/or manage the facilities at issue, and exercise control over Plaintiff and Aggrieved Employees with respect to their employment. Defendants employ Plaintiff and Aggrieved Employees, among other hourly employees, throughout their facilities.

12. Plaintiff is informed and believes that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

13. As employers of Plaintiff and Aggrieved Employees throughout the relevant time periods, Defendants, each of them, are solely, jointly, and severally liable for penalties for violating the Labor Code with respect to the employment of Plaintiff and Aggrieved Employees.

14. Throughout this Complaint, any reference to “Defendant” or “Defendants” is intended to refer to Defendants Eskaton Properties Incorporated and California Healthcare Consultants, Inc. jointly.

15. Plaintiff is informed, believes, and thereon alleges that Defendants operate facility locations throughout California, including in Alameda County. Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved Employees, throughout California, including in Alameda County.

16. The true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously named Defendants is responsible in some manner for the occurrences and violations as herein alleged. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained. Defendants are jointly and severally liable for the civil penalties asserted.

17. At all relevant times, Defendants have done business under the laws of California, have had places of business in California, including in this judicial district, and have employed Aggrieved Employees in this judicial district. Defendants are “person[s]” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also “employer[s]” as that term is used in the Labor Code and IWC Wage Orders.

JURISDICTION AND VENUE

18. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and/or 395.5. Defendants conduct business and employ Aggrieved Employees in this County, and therefore the liability and the cause or some part of the cause arose in this County.

19. This Court has jurisdictions over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendants because they are companies authorized to do business in California, and because Defendants in fact do business and employ workers in California.

FACTUAL ALLEGATIONS

20. Defendants are part of the nursing homes & long-term care facilities industry. Defendants provide memory care, assisted living and skill nursing services. Defendants have over 1,400 employees and operates twelve facilities across California. Defendants conduct extensive operations and employ a substantial number of workers in California.

21. Plaintiff currently works as a residential care assistant for Defendants at their facility located in Burlingame, California. Plaintiff has been employed by Defendants since approximately March 2019 and is compensated at an hourly rate of approximately \$19.00.

22. Plaintiff is informed, believes, and thereon alleges that Aggrieved Employees were and are employed by Defendants throughout California, including in this County, and perform work materially similar to Plaintiff. Defendants pay and/or paid Aggrieved Employees, including Plaintiff, on an hourly rate basis.

23. Plaintiff is informed, believes, and thereon alleges that the policies and practices of Defendants have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of the facilities' location in California.

24. Aggrieved Employees are required to follow and abide by common work, time, and pay policies and procedures in the performance of their jobs and duties.

25. At the end of each pay period, Aggrieved Employees receive wages from Defendants that are determined by common systems and methods that Defendants select and control.

26. As a matter of policy and/or practice, Defendants routinely fail to compensate Plaintiff and Aggrieved Employees for all hours worked, including at a minimum wage and overtime wage rate. Plaintiff and Aggrieved Employees are not permitted to log the actual number of hours they work each week and therefore are not compensated for all time worked and spent under the control and supervision of Defendants, *i.e.*, time spent for the benefit of Defendants.

27. For instance, Defendants requires Plaintiff and Aggrieved Employees to attend a mandatory monthly training lasting several hours for which Plaintiff and Aggrieved Employees do not receive compensation. As a matter of policy, Defendants systematically fail to record such trainings as hours worked. This time goes unrecorded and uncompensated, even though it should be

1 compensated at a minimum wage or overtime wage rate.

2 28. Plaintiff and Aggrieved Employees are also often not provided with timely, compliant
3 meal breaks. Plaintiff and Aggrieved Employees are often too busy with work during the day to take
4 a bona fide uninterrupted meal break of at least 30 minutes by the end of the fifth hour of work.
5 Plaintiff and Aggrieved Employees are therefore not provided compliant meal breaks and do not
6 regularly receive premium payments for those non-compliant meal breaks.

7 29. Additionally, when Plaintiff and Aggrieved Employees are required to work longer
8 shifts lasting ten hours or more, Plaintiff and Aggrieved Employees are systematically denied a second
9 meal break to which they are entitled without receiving premium payments.

10 30. Defendants also regularly require Plaintiff and Aggrieved Employees to remain on duty
11 during rest periods. Plaintiff and Aggrieved Employees are not provided with rest breaks during which
12 they are relieved of all work-related duties. Plaintiff and Aggrieved Employees are often too busy
13 with work during the day to have time to take bona fide rest breaks. In the rare instance when Plaintiff
14 and Aggrieved Employees attempt a rest break, such is routinely untimely and/or interrupted.

15 31. Despite these recurring violations, Defendants do not pay premiums to Plaintiff and
16 Aggrieved Employees for missed, interrupted and/or untimely, *i.e.*, non-compliant, rest and meal
17 periods.

18 32. As a result of these practices, Defendants deny Plaintiff and Aggrieved Employees
19 compensation for all hours worked, including at the minimum wage and overtime wage rate for off-
20 the-clock work, and premium payments resulting from missed, untimely and/or interrupted meal and
21 rest periods.

22 33. Defendants' common course of wage-and-hour abuse includes routinely failing to
23 maintain true and accurate records of the hours worked by Aggrieved Employees. Defendants have
24 failed to record hours that Plaintiff and Aggrieved Employees worked during hours worked off-the-
25 clock.

26 34. Defendants' failure to record all hours worked results in a failure to provide Aggrieved
27 Employees, including Plaintiff, accurate itemized wage statements as required by California law. The
28 wage statements do not contain all of the off-the-clock work or time that should be compensable

1 during interruptible meal breaks. Further, the wage statements are inaccurate because they do not
2 include premium pay for missed breaks and overtime.

3 35. Further, Defendants do not provide Aggrieved Employees with full payment of all
4 wages owed at the end of employment. As these workers are owed for off-the-clock work, unpaid
5 minimum wage and overtime, and premium pay when their employment ends, and these amounts
6 remain unpaid under Defendants' policies and practices, Defendants fail to pay all wages due upon
7 separation of employment. As a consequence, Defendants are subject to waiting time penalties.

8 36. Plaintiff is informed, believes, and thereon alleges that Defendants' same compensation
9 protocol and meal and rest period practices are used across all Defendants' facilities throughout
10 California.

11 37. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
12 their policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time
13 worked and that Plaintiff and Aggrieved Employees do not receive legally compliant meal and rest
14 periods. Thus, Defendants' denial of proper wages and compliant meal and rest periods to Plaintiff
15 and Aggrieved Employees is and/or was deliberate and willful.

16 38. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
17 has been widespread, repeated, and consistent as to Aggrieved Employees and throughout
18 Defendants' operations in California.

19 39. Defendants' conduct is and/or was willful, carried out in bad faith, and triggers
20 significant civil penalties in an amount to be determined at trial.

21 **FIRST CAUSE OF ACTION**
22 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204,**
23 **1194, and 1198 (Failure to Pay for all Hours Worked)**

24 40. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 41. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy
27 and practice of not compensating Aggrieved Employees for all hours worked or spent in Defendants'
28 control. Defendants regularly require Aggrieved Employees to perform uncompensated off-the-clock
work.

1 42. Labor Code § 200 defines wages as “all amounts for labor performed by employees of
2 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
3 commission basis or method of calculation.”

4 43. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
5 employment are due and payable twice during each calendar month....”

6 44. Labor Code § 1194(a) provides as follows:
7 Notwithstanding any agreement to work for a lesser wage, any employee
8 receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil
10 action the unpaid balance of the full amount of this minimum wage or
 overtime compensation, including interest thereon, reasonable attorneys’
 fees, and costs of suit.

11 45. Labor Code § 1198 makes it unlawful for employers to employ employees under
12 conditions that violate the Wage Order.

13 46. IWC Wage Orders 4-2001 subsection 2(K) and 5-2001 subsection 2(K) define hours
14 worked as “the time during which an employee is subject to the control of an employer, and includes
15 all the time the employee is suffered or permitted to work, whether or not required to do so.”

16 47. In violation of California law, Defendants knowingly and willfully refuse to provide
17 Aggrieved Employees with compensation for all time worked. Defendants require Plaintiff and
18 Aggrieved Employees to work off-the clock. For example, Defendants require Plaintiff and
19 Aggrieved Employees attend a mandatory monthly training lasting several hours. As a matter of
20 policy, Defendants do not record such trainings as hours worked. Defendants do not account for this
21 off-the-clock work when compensating Plaintiff and Aggrieved Employees, resulting in widespread
22 under-compensation of Aggrieved Employees.

23 48. Therefore, Defendants committed, and continue to commit, the acts alleged herein
24 knowingly and willfully, and in conscious disregard of the Aggrieved Employees’ rights.

25 49. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation of a Labor Code provision that does not
27 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.
28 Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved

Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

50. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for all hours worked in violation of Labor Code §§ 204, 1194, and 1198 throughout California on behalf of himself, the State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

51. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice, and amended notice, of his intention to file his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

52. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

53. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 1182.12, 1194, and 1197 (Failure to Pay Minimum Wage)

54. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

55. Defendants fail to compensate Plaintiff and Aggrieved Employees with at least the minimum wage for all hours worked or spent in Defendants’ control because they failed to pay minimum wages for all hours worked, including the off-the-clock work described above.

56. During the applicable statutory period, Labor Code §§ 1182.12, and 1197, and the Minimum Wage Order were in full force and effect. For employers with 26 or more employees, the minimum wage for all hours worked was twelve dollars (\$12.00) per hour from January 1, 2019 to December 31, 2020, inclusive, thirteen dollars (\$13.00) per hour from January 1, 2020 to December 31, 2020, inclusive, and fourteen dollars (\$14.00) per hour since January 1, 2021.

57. IWC Wage Orders 4-2001 subsection 2(K) and 5-2001 subsection 2(K) define hours

1 worked as “the time during which an employee is subject to the control of an employer, and includes
2 all the time the employee is suffered or permitted to work, whether or not required to do so.”

3 58. Labor Code § 1194(a) provides as follows:

4 Notwithstanding any agreement to work for a lesser wage, any employee
5 receiving less than the legal minimum wage or the legal overtime
6 compensation applicable to the employee is entitled to recover in a civil
7 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorneys’
fees, and costs of suit.

8 59. Labor Code § 1198 makes it unlawful for employers to employ employees under
9 conditions that violate the Wage Order.

10 60. Because of Defendants’ policies and practices with regard to compensating Plaintiff and
11 Aggrieved Employees, Defendants have failed to pay minimum wages as required by law. Plaintiff
12 and the Aggrieved Employees frequently perform work off-the-clock for which they are compensated
13 below the statutory minimum wage, as determined by the IWC.

14 61. California law further requires that employers pay their employees for all hours worked
15 at the statutory or agreed upon rate. No part of the rate may be used as a credit against a minimum
16 wage obligation.

17 62. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
18 Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not
19 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.
20 Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved
21 Employee per pay period for each subsequent violation of a Labor Code provision that does not
22 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

23 63. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
24 minimum wages in violation of Labor Code §§ 1182.12, 1194, and 1197 throughout California on
25 behalf of himself, the State of California, and other Aggrieved Employees pursuant to Labor Code §
26 2699(f).

27 64. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
28 Workforce Development Agency (“LWDA”) with notice, and amended notice, of his intention to

1 file his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
2 satisfied the administrative prerequisites to commence this civil action in compliance with §
3 2699.3(a).

4 65. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
5 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
6 award of attorneys' fees and costs as set forth below.

7 66. Wherefore, Plaintiff requests relief as hereinafter provided.

8 **THIRD CAUSE OF ACTION**

9 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 510** 10 **and 1194 (Failure to Pay Overtime Wages)**

11 67. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 68. Defendants do not properly compensate Aggrieved Employees with appropriate
14 overtime premiums, including time and a half premiums based on their regular rate of pay, as required
15 by California law.

16 69. Labor Code § 510(a) provides as follows:

17 Eight hours of labor constitutes a day's work. Any work in excess of eight
18 hours in one workday and any work in excess of 40 hours in any one
19 workweek and the first eight hours worked on the seventh day of work in
20 any one workweek shall be compensated at the rate of no less than one and
21 one-half times the regular rate of pay for an employee. Any work in excess
22 of 12 hours in one day shall be compensated at the rate of no less than twice
23 the regular rate of pay for an employee.

24 70. IWC Wage Order 5-2001(3)(A)(1) states that employees:

25 ...shall not be employed more than eight (8) hours in any workday or more
26 than 40 hours in any workweek unless the employee receives one and one-
27 half (1 ½) times such employee's regular rate of pay for all hours worked
28 over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's
work. Employment beyond eight (8) hours in any workday or more than six
(6) days in any workweek is permissible provided the employee is
compensated for such overtime at not less than ... [o]ne and one-half (1½)
times the employee's regular rate of pay for all hours worked in excess of
eight (8) hours up to and including 12 hours in any workday, and for the
first eight (8) hours worked on the seventh (7th) consecutive day of work in

a workweek....

71. Labor Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

72. Labor Code § 200 defines wages as "all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

73. Defendants' policies and practices of requiring Aggrieved Employees to perform work off-the-clock are unlawful and because the Aggrieved Employees work eight hours per day results in overtime violations. As a result of these unlawful policies and practices, Aggrieved Employees have worked overtime hours for Defendants without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders, and other applicable law.

74. Defendants knowingly and willfully refused to perform their obligations to compensate Aggrieved Employees for all premium wages for overtime work.

75. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

76. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay overtime wages in violation of Labor Code §§ 510 and 1194 and the applicable wage orders throughout California on behalf of himself, the State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

77. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and

1 Workforce Development Agency (“LWDA”) with notice, and amended notice, of his intention to file
2 his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied
3 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

4 78. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
5 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
6 award of attorneys’ fees and costs as set forth below.

7 79. Wherefore, Plaintiff requests relief as hereinafter provided.

8 **FOURTH CAUSE OF ACTION**

9 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 226.7 10 and 512 (Meal Periods and Failure to Provide Premium Pay Therefrom)**

11 80. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 81. Plaintiff and the Aggrieved Employees are routinely denied timely, full, off-duty meal
14 periods. Plaintiff and Aggrieved Employees are often too busy with work during the day to take a
15 bona fide meal break by the end of the fifth hour of work. Plaintiff and Aggrieved Employees are not
16 provided timely, 30 minute, uninterrupted meal breaks. Additionally, when Plaintiff and Aggrieved
17 Employees are required to work longer shifts lasting ten hours or more, Plaintiff and Aggrieved
18 Employees are systematically denied a second meal break to which they are entitled. Defendants do
19 not pay Plaintiff and the Aggrieved Employees one hour of premium pay for the missed or
20 noncompliant meal breaks.

21 82. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendants to
22 authorize and permit meal periods to their employees. Labor Code §§ 226.7 and 512 and the applicable
23 Wage Orders prohibit employers from employing an employee for more than five hours without a
24 meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the
25 thirty-minute meal period, the employee is considered “on duty” and the meal period is counted as
26 time worked under the applicable Wage Orders.

27 83. Labor Code § 512(a) provides:

28 An employer shall not employ an employee for a work period of more than five
hours per day without providing the employee with a meal period of not less

1 than 30 minutes, except that if the total work period per day of the employee is
2 no more than six hours, the meal period may be waived by mutual consent of
3 both the employer and employee. An employer shall not employ an employee
4 for a work period of more than 10 hours per day without providing the employee
5 with a second meal period of not less than 30 minutes, except that if the total
6 hours worked is no more than 12 hours, the second meal period may be waived
7 by mutual consent of the employer and the employee only if the first meal
8 period was not waived.

9 84. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails
10 to authorize, permit, and/or make available a required meal period must, as compensation, pay the
11 employee one hour of pay at the employee's regular rate of compensation for each workday that the
12 meal period was not authorized and permitted.

13 85. Despite these requirements, Defendants knowingly and willfully refuse to perform their
14 obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
15 ability to take the timely off-duty meal periods to which they are entitled. Defendants have also failed
16 to pay Plaintiff and Aggrieved Employees one hour of pay for each meal period that they were denied.
17 Defendants' conduct described herein violates Labor Code §§ 226.7 and 512.

18 86. On information and belief, Defendants' conduct has been substantially the same at all
19 relevant times throughout the state of California.

20 87. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
21 Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not
22 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.
23 Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved
24 Employee per pay period for each subsequent violation of a Labor Code provision that does not
25 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

26 88. Plaintiff seeks to recover civil penalties from Defendants for their violations of the meal
27 period requirements of Labor Code §§ 226.7 and 512 throughout California on behalf of himself, the
28 State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(g)(i).

89. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
Workforce Development Agency ("LWDA") with notice, and amended notice, of his intention to file

1 his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied
2 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

3 90. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
4 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
5 award of attorneys' fees and costs as set forth below.

6 91. Wherefore, Plaintiff requests relief as hereinafter provided.

7 **FIFTH CAUSE OF ACTION**

8 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.7**
9 **(Rest Breaks and Failure to Pay Premiums Therefrom)**

10 92. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 93. Defendants regularly require Plaintiff and Aggrieved Employees to remain on duty
13 during rest periods. Plaintiff and Aggrieved Employees are not provided with rest breaks during which
14 they are relieved of all work-related duties. Plaintiff and Aggrieved Employees are often too busy
15 with work during the day to have time to take bona fide rest breaks. In the rare instance when Plaintiff
16 and Aggrieved Employees attempt a rest break, such is routinely untimely and/or interrupted.
17 Defendants do not pay Plaintiff and the Aggrieved Employees one hour of premium pay for the missed
18 or noncompliant rest breaks.

19 94. Labor Code §§ 226.7 and the applicable Wage Orders require Defendants to authorize
20 and permit rest periods to their employees. Labor Code § 226.7 and the applicable Wage Orders
21 require employers to authorize and permit employees to take ten minutes of net rest time per four
22 hours or major fraction thereof of work, and to pay employees their full wages during those rest
23 periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-
24 minute rest period, the employee is considered "on duty" and the meal or rest period is counted as
25 time worked under the applicable Wage Orders.

26 95. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer must pay
27 an employee denied a required rest period one hour of pay at the employee's regular rate of
28 compensation for each workday that the rest period was not authorized and permitted and/or not made

1 available.

2 96. Despite these requirements, Defendants knowingly and willfully refuse to perform their
3 obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
4 ability to take the off-duty rest periods to which they are entitled. Defendants have also failed to pay
5 Plaintiff and Aggrieved Employees one hour of pay for each off-duty rest period that they were
6 denied. Defendants' conduct described herein violates Labor Code § 226.7.

7 97. On information and belief, Defendants' conduct has been substantially the same at all
8 relevant times throughout the state of California.

9 98. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
10 Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not
11 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.
12 Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved
13 Employee per pay period for each subsequent violation of a Labor Code provision that does not
14 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

15 99. Plaintiff seeks to recover civil penalties from Defendants for their violations of the rest
16 break requirements of Labor Code § 226.7 throughout California on behalf of himself, the State of
17 California, and other Aggrieved Employees pursuant to Labor Code § 2699(g)(i).

18 100. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
19 Workforce Development Agency ("LWDA") with notice, and amended notice, of his intention to file
20 his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied
21 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

22 101. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
23 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
24 award of attorneys' fees and costs as set forth below.

25 102. Wherefore, Plaintiff requests relief as hereinafter provided.
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1 **SIXTH CAUSE OF ACTION**

2 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code § 226**
3 **(Accurate, Itemized Wage Statements)**

4 103. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
5 herein.

6 104. Defendants do not provide Plaintiff and the Aggrieved Employees with accurate
7 itemized wage statements as required by California law, as a result of the meal and rest break, off-
8 the-clock work, minimum wage ,and overtime violations set forth above, and Defendants' failure to
9 provide premium pay for the missed breaks.

10 105. Labor Code § 226(a) provides:

11 An employer, semimonthly or at the time of each payment of wages, shall
12 furnish to his or her employee, either as a detachable part of the check, draft,
13 or voucher paying the employee's wages, or separately if wages are paid by
14 personal check or cash, an accurate itemized statement in writing showing
15 (1) gross wages earned, (2) total hours worked by the employee, except as
16 provided in subdivision (j), (3) the number of piece-rate units earned and
17 any applicable piece rate if the employee is paid on a piece-rate basis, (4)
18 all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item, (5) net wages earned,
20 (6) the inclusive dates of the period for which the employee is paid, (7) the
21 name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number, (8) the name and address of the legal entity that is the
24 employer ... and (9) all applicable hourly rates in effect during the pay
25 period and the corresponding number of hours worked at each hourly rate
26 by the employee ... The deductions made from payment of wages shall be
27 recorded in ink or other indelible form, properly dated, showing the month,
28 day, and year, and a copy of the statement and the record of the deductions
shall be kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California.

23 106. The IWC Wage Orders also establishes this requirement. (See IWC Wage Orders 5-
24 2001(7) and 4-2001(7)).

25 107. Labor Code § 226(e)(1) provides:

26 An employee suffering injury as a result of a knowing and intentional failure
27 by an employer to comply with subdivision (a) is entitled to recover the
28 greater of all actual damages or fifty dollars (\$50) for the initial pay period
in which a violation occurs and one hundred dollars (\$100) per employee

1 for each violation in a subsequent pay period, not to exceed an aggregate
2 penalty of four thousand dollars (\$4,000), and is entitled to an award of
costs and reasonable attorney's fees.

3 108. Labor Code § 226.3 provides:

4 Any employer who violates subdivision (a) of Section 226 shall be subject
5 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
6 employee per violation in an initial citation and one thousand dollars
7 (\$1,000) per employee for each violation in a subsequent citation, for which
8 the employer fails to provide the employee a wage deduction statement or
fails to keep the records required in subdivision (a) of Section 226. The civil
penalties provided for in this section are in addition to any other penalty
provided by law.

9 109. Due to the failure to pay one hour of premium pay to Plaintiff and the Aggrieved
10 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
11 minimum wage, and overtime violations, the wage statements Defendants provide their employees,
12 including the Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages
13 earned, or actual hours worked. Accordingly, Defendants have knowingly and willfully failed to
14 provide timely, accurate itemized wage statements to Plaintiff and the Aggrieved Employees in
15 accordance with Labor Code §§ 226, 226.3 and the IWC Wage Order.

16 110. On information and belief, Defendants' conduct has been substantially the same at all
17 relevant times throughout the state of California.

18 111. Labor Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty to
19 be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or
20 herself and other current or former employees pursuant to the procedures set forth in Labor Code §
21 2699.3. Labor Code § 2699(a) provides:

22 Notwithstanding any other provision of law, any provision of this code
23 that provides for a civil penalty to be assessed and collected by the Labor
24 and Workforce Development Agency or any of its departments,
25 divisions, commissions, boards, agencies or employees, for a violation
26 of this code, may, as an alternative, be recovered through a civil action
brought by an aggrieved employee on behalf of himself or herself and
other current or former employees.

27 112. Plaintiff seeks to recover civil penalties from Defendants pursuant to Labor Code §
28 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees

1 an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts
2 established by Labor Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties
3 available under Labor Code § 226(e), as prayed for herein.

4 113. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
5 Workforce Development Agency (“LWDA”) with notice, and amended notice, of his intention to file
6 his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied
7 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

8 114. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
9 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
10 award of attorneys’ fees and costs as set forth below.

11 115. Wherefore, Plaintiff requests relief as hereinafter provided.

12 **SEVENTH CAUSE OF ACTION**

13 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 201- 14 203 (Waiting Time Penalties)**

15 116. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 117. Defendants do not provide Plaintiff and the Aggrieved Employees with their wages
18 when due under California law after their employment with Defendants ends, as a result of the
19 meal and rest break, off-the-clock work, minimum wage, and overtime violations set forth above
20 and Defendants’ failure to provide premium pay for the missed breaks.

21 118. Labor Code § 201 provides:

22 If an employer discharges an employee, the wages earned and unpaid at the
time of discharge are due and payable immediately.

23 119. Labor Code § 202 provides:

24 If an employee not having a written contract for a definite period quits his
25 or her employment, his or her wages shall become due and payable not later
26 than 72 hours thereafter, unless the employee has given 72 hours previous
notice of his or her intention to quit, in which case the employee is entitled
to his or her wages at the time of quitting.

27 120. Labor Code § 203 provides, in relevant part:

28 If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any

1 wages of an employee who is discharged or who quits, the wages of the
2 employee shall continue as a penalty from the due date thereof at the same
3 rate until paid or until an action therefor is commenced; but the wages shall
4 not continue for more than 30 days.

5 121. Plaintiff and the Aggrieved Employees have left their employment with Defendants
6 during the statutory period, at which time Defendants owed them unpaid wages for premium pay for
7 missed or noncompliant meal and rest periods.

8 122. Defendants willfully refused and continue to refuse to pay Plaintiff and the Aggrieved
9 Employees all the wages that are due and owing them, in the form of meal and rest period premium
10 pay and other wages due and owing, upon the end of their employment. As a result of Defendants'
11 actions, Plaintiff and the Aggrieved Employees have suffered and continue to suffer substantial losses,
12 including lost earnings, and interest.

13 123. Defendants' willful failure to pay Plaintiff and the Aggrieved Employees the wages due
14 and owing them constitutes a violation of Labor Code §§ 201-203. In addition, § 203 provides that an
15 employee's wages will continue as a penalty up to thirty days from the time the wages were due.
16 Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

17 124. On information and belief, Defendants' conduct has been substantially the same at all
18 relevant times throughout the state of California.

19 125. Labor Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty to
20 be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or
21 herself and other current or former employees pursuant to the procedures set forth in Labor Code §
22 2699.3. Labor Code § 2699(a) provides:

23 Notwithstanding any other provision of law, any provision of this code that
24 provides for a civil penalty to be assessed and collected by the Labor and
25 Workforce Development Agency or any of its departments, divisions,
26 commissions, boards, agencies or employees, for a violation of this code,
27 may, as an alternative, be recovered through a civil action brought by an
28 aggrieved employee on behalf of himself or herself and other current or
former employees.

126. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203.

1 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as
2 prayed for herein.

3 127. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
4 Workforce Development Agency (“LWDA”) with notice, and amended notice, of his intention to
5 file his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
6 satisfied the administrative prerequisites to commence this civil action in compliance with §
7 2699.3(a).

8 128. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
9 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
10 award of attorneys’ fees and costs as set forth below.

11 129. Wherefore, Plaintiff requests relief as hereinafter provided.

12 **PRAYER FOR RELIEF**

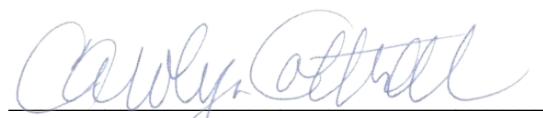
13 WHEREFORE, Plaintiff prays for relief as follows:

- 14 1. For the Court to declare, adjudge, and decree that Defendants have violated the
15 California Labor Code as alleged herein;
 - 16 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
17 civil penalties to the full extent provided under the PAGA;
 - 18 3. For interest on penalties awarded as provided by applicable law;
 - 19 4. For an award of reasonable attorneys’ fees;
 - 20 5. For all costs of suit; and
 - 21 6. For such other and further relief as this Court deems just and proper.
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Respectfully submitted,

Date: July 28, 2021



Carolyn H. Cottrell
Ori Edelstein
Michelle S. Lim
Kristabel Sandoval
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: July 28, 2021

6 

7 Carolyn H. Cottrell
8 Ori Edelstein
9 Michelle S. Lim
10 Kristabel Sandoval
11 SCHNEIDER WALLACE
12 COTTRELL KONECKY LLP

13 *Attorneys for Plaintiff, on behalf of the State of*
14 *California and Aggrieved Employees*